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File No. Succession II/52 IV

Legal Department

B. BRANCH

Subject:—

Scrutiny of notifications under the Indian Succession Act, 1925

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File No. Succession II/52 IV.

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Legal Department

Shri Laiwala's difficulty appears to be that when a certificate is given by a Court in Form B appended to Regulation VIII of 1827 and on the strength of that certificate an attempt is made to realise the debts of the deceased; the Courts refuse to grant a decree under section 214(1) of the Indian Succession Act for the reason that the certificate does not contain a list of the debts as required under clause (v) of section 214(1).

2. It is ture that under rule 3 of Regulation VIII of 1827 the Court is required to grant a certificate in the Form contained in Appendix B thereto declaring the person making the claim as recognized heir, executor or administrator, as the case may be, of the deceased; and Form B does not require a list of debts of the deceased to be specified in the certificate. However, section 390 of the India Succession Act provides inter alia that notwithstanding anything in the Bombay Regulation N. VIII of 1827, the provisions of section 370(2), 372(1)(f) and sections 374 to 379 and 381 to 384 and 387to 389 with respect to certificates under Part X of that Act and applications applications therefore shall, so far as they ca n be made applicable, apply, respectively, to certificat-s granted under that Act Regulation and applica tion s made for certificates thereunder after the first day of May 1889. Part X of the Succession Act provides for the grant of succession certificate with respect to any debt or security to which a right is not required to be established by letters of administration or probate. Section 372(1)(f) provides that the application for such certificate shall set forth the debts and securities in respect of which the certificate is applied for. Section 374 provides that the District Judge while granting the certificate shall specify in the certificate the debts and securities set forth in the application for the certificate. Section 377 provides that certificates sha be granted as nearly as circumstances admit in the for

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set forth in Schedule VIII. Reading, therefore, these provisions along with section 390 it is clear that the Courts while considering the question of granting a certificate under rule 3 in Chapter I of Regulation VIII of 1827 will have to be guided by the provisions of section 390. Consequently, the Courts will have to grant the certificates in the form set forth in Schedule VIII appended to the Indian Succession Act. The difficulty envisaged by Shri Laiwala in his letter at page 1 ante does not survive and no amendment of the Regulation is necessary.

O/C Sd/-

Additional Secretary to Government.

U.R. to H.D. No. dated the September 1952.

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The view taken by Shri Laiwala and the High Court [illegible] does not appear to be correct. Attention in this connection is invited to the provisions of section 390 of the Indian Succession Act, which provides that notwithstanding anything in Bombay Regulation No. VIII of 1827, the provisions of sections 370(2), 372(1), 374 to 379, 381, 384, 387, 388 and 389 with respect to certificates under Part X of the said Act and applications therefor, and of section 317 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively to certificates granted under that Regulation, and applications made for certificates thereunder, after the 1st day of May 1889, and to the exhibition of inventories and accounts by the holders of such certificates so granted. Section 372(1)(f), referred to above, provides that application for 'such' a certificate (meaning a succession certificate with respect to any debt or security) shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the C.P.C. for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the particulars regarding the debts and securities, in respect of which the certificate is applied for. Under section 374, when the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate. Section 376 provides that certificates shall be granted and extensions of certificate shall be made, as nearly as circumstances admit, in the forms set forth in Schedule VIII. It will be seen from these provisions that in respect of a application made under the Bombay Regulation No.VIII of 1827 wherein the qustion of debt or security is involved the certificate to be granted by a Judge to the applicant is not in the form contained in appendix B to the Regulation but in the

form set forth in Schedule VIII to the Indian Succession Act, 1925. The contention of Shri Laiwala that courts grant certificate according to the form given in appendix B in this behalf and then they refuse to recognize representative title on the ground that debts have not been specified as required by section 214 is not correct. And if any court has issued the certificate in the form contained in appendix B in such case then it is obviously invalid as it would contravene the provision of the Indian Succession Act.

2. The statement made by the District Judge, Bijapur, in para 3 of his letter at pp. 21-22 that in view of the provisions of section 390 and other provisions of the Succession Act the whole of Chapter I of and the form in Appendix B appended to, the Regulation in question would be anachronism and should therefore, be repealed, does not also appear to be correct. The provisions of sections 372, etc. of the Indian Succession act apply to the applications made under the Regulation only when the questic of debts and security is involved therein. In allother cases the provisions of the Regulation proper would apply and the certificate in such cases will have to be given in the form contained in appendix B. Chapter I and appendix B thereof cannot, therefore, be said to be anachronisms.

3 As regards the provisions of the Court Fees Act, 1870, referred to in Shri Laiwala's letter it is pointed out that under art. 12(A) of Schedule I to the said Act the proper fee leviable on a certificate under Bom. Regulation No.VII of 1827 is the fee leviable in the case of a probate on the amount or value of the property in respect of which the certificate is granted. In view of this provision it is clear that the provisions in respect of probate in the Court Fees Act would be applicable, so far as may be, to the cases of such certificates also. Section 191(1) of the Court Fees Act, 1870, provides that no order entitling the petitio to the grant of probate or letters of administration sh be made upon an application for such grant until the

petitioner has filed in the court a valuation of the property in the form set forth in the third Schedule. Under Paragraph 1 of Schedule III referred to above the applicant is required to set forth all the property and credits of the deceased person. Since the court fee on the certificate is also to be levied on the amount or value of the property, the court will have to satisfy itself about the same and as such the applicant, even under the law as it stands at present, will have to set forth all the property and credits of the deceased person in view of the provisions of Section 191 of the Court Fees Act.

6. It will thus be seen that neither for the purposes of specifying debts nor for the purposes of court fees willit seems necessary to amend the form contained in Appendix B of Bpm. Regulation VIII of 1827, as suggested in these papers, It will be desirable to bring this view to the notice of the High Court particularly having regard to the fact that Form B in the Regulation has been on the Statute book since 1827.

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Additional Secretary to Government.

U.R. to H.D. No. 18666/B, dated the 10th November 1952.

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